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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 28th February 2015

No. 1939–IR(M)-3/2015-LE–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th December 2014 in I.D. Misc. Case No. 61/2004 (under Section 33-A) of the Presiding Officer, Industrial Tribunal, Rourkela to whom the industrial disputes between the Management of (1) General Manager (P. & A.), SAIL, Rourkela Steel Plant, Rourkela, (2) M/s Ram Krishna Enterprises, C/o General Manager (P. & A.), SAIL, Rourkela Steel Plant, Rourkela and their Workman Shri Shah Kerketta was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ROURKELA

INDUSTRIAL MISC. CASE NO. 61/2004 (33-A)

Dated the 15th December 2014

Present :

Smt. V. Jayashree,
Presiding Officer, Industrial Tribunal,
Rourkela.

Between :

Shah Kerketta, . . Complainant
C/o. Ramesh Ch. Dalai,
Room No. 23, Barrack No. 1,
Golghar, Sector-5, Rourkela.

And

1. G. M. (P. & A.) SAIL, . . Opp. Parties
Rourkela Steel Plant, Rourkela.

2. M/s Ram Krishna Enterprises,
C/o G. M (P. & A.),
SAIL, Rourkela Steel Plant, Rourkela.

Appearances :

For the Complainant	. .	Shri N. C. Mohanty, Shri R. K. Pradhan, Advocates
For the O.P No. 1	. .	Shri L. K. Nayak, Law Officer
For the O.P No. 2	. .	None

AWARD

This is a complaint under Section 33-A of the Industrial Disputes Act, 1947 filed by the Complainant against the Opposite Party Nos. 1 & 2 in the matter of I.D. Case No.16/1996.

2. The complainant petitioner alleged that the Opposite Parties have been guilty of contravention of the provision of Section 33 of the Industrial Disputes Act, 1947 on the ground that the complainant who was working as a Carpenter under the O.P. is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 under the Rourkela Steel Plant which is an Industry as per Section 2(j) of the Industrial Disputes Act and the Opposite Parties were the employer as per Section 2(j) of the said Act. As the complainant workman was working under the Opposite Parties was a connected workman in I. D. Case No.16/1996, then pending wherein the schedule of reference was :

> "Whether 310 contract labourers (as per list) working in 23 categories of jobs (as per list) in M/s Rourkela Steel Plant, Rourkela are entitled for regularization in service under the Principal Employer, i. e. M/s Rourkela Steel Plant, Rourkela ? If so, what would be the details ?"

The workman, complainant was discharging his responsibilities to the satisfaction of his superiors and he was never proceeded with any disciplinary action. During the tenure of his service he was issued with a notice by the employer on the 30th November 1996 informing their intention to retrench him (workman) since his service will no more be required after the 31st December 1996. The complainant workman claim that the refusal of employment/termination of service of the complainant by the O.P. is highly motivated, illegal, irregular and in violation of the principles of natural justice. During the pendency of the proceeding in the I.D. Case No.16/96, the employer O.P. refused employment/terminated the services of the complainant without complying to the statutory provision of Section 33 of the Industrial Disputes Act. It is further submitted that the Dy. Labour Commissioner, Rourkela vide his Letter No.14371 (23)/DIC., dated the 21st December 1996 issued a directive to the O.Ps. not to effect the proposed closure and retrenchment of the workman from the employment and also advised them to obtain specific written permission from Industrial Tribunal to effect the retrenchment as required under Section 33(1)(a) of the Industrial Disputes Act. However before the termination of services of the complainant, no application was made by the employer to the Tribunal for the permission under Section 33 of the I.D. Act which makes the action of the Opp. parties void *ab initio*. Hence the complainant with a prayer for reinstatement in the service with continuity of service from the date of his termination i.e. the 31st December 1996 with full back wages and consequential benefits along with compensation of Rs. 25, 000 for the harassment and miseries suffered.

3. The Opposite Party No. 1 G. M. (P. & A.) (SAIL) appeared and by filing the counter, specifically denying the allegations/averments in the complaint has averred *inter alia* that as practice Rourkela Steel Plant invited tenders from the registered contractors to award various contracts for execution of different jobs by the contractors. After completion of tender formalities, work order is issued to such contractors for execution of work as per terms and condition of the contract. The

contractor is to execute the job contract within the time stipulated therein. In order to perform the contractual job, the contractors employ their labour for the said period of the contract, which is a condition of the contract. By efflux of time, when the contract comes to an end, the contractors pay the dues and the contract is closed. Similarly in the instant case, the Opposite Party No. 2 was an independent contractor having its own establishment was awarded with a contract for execution of guarding and the contract was from the 1st October 1995 to the 31st December 1996 and 26 numbers of all its labourers were engaged to execute the contractual job. The contract comes to an end with effect from the 31st December 1996. Accordingly the contractors issued intimation to all its labourers about cessations of contract with effect from the 31st December 1996 and to receive the terminal dues. Hence the present application is misconceived, devoid of any merit, not maintainable and liable to be dismissed on the ground that the complainant was a contract labour under the Contractor No. 2 and that the management of Rourkela Steel Plant has never appointed him. There being no employer-employee relationship between the management of Rourkela Steel Plant and the applicant, the allegation of violation of service condition by the management is unfounded and baseless. Further since the contract was for the period from the 1st January 1996 to the 31st December 1996, engagement of the labourers by the contractor for the said period of contract is an implied terms of employment under the contract. Therefore by cessation of the employment with effect from the 31st December 1996 of the applicant, no service condition has been changed. Hence no violation of Section 33 of the I. D. Act can be made out.

4. In response to the complainant the Opposite Party No. 2, the contractor did not prefer to appear, hence was set *ex parte*.

5. On the above pleadings the following issues emerged for determination :

(i) Whether Opposite Party No. 1 SAIL, G.M, R.S.P is the principal employer of the complaint or not ?

(ii) Whether there is any contravention of the provision under Section 33 of the I. D. Act by the employer/contractor ?

(iii) Whether the complaint as made in the application is maintainable against the management of SAIL, R.S.P. ?

(iv) Whether the dispute is maintainable ?

(v) If not, to what relief the applicant entitled ?

6. In support of the case, the complainant has examined himself as W. W. 1 and also proved the documents exhibited like Ext. 1, copy of retrenchment notice, Ext. 2, copy of order of reference, Ext.3, copy of letter for Conciliation by D.L.C. and Ext. 4, copy of Conciliation letter. On the other hand, in order to substantiate the case the Opposite Party No.1 has examined Shri Gyan Ranjan Dash as M.W. 1 and proved the documents exhibiting the same like Ext. A, copy of tender notice, Ext. B, copy of wage-*cum*-muster sheets, Ext.C, copy of order of Hon'ble Supreme Court, Ext. D, copy of guidelines, Ext.E, copy of letter and Ext.F, copy of order of Hon'ble Industrial Tribunal, Rourkela.

7. *Issue No.* i :—This being the primary issue for determination, it is taken up first. The specific case of the complainant is that he is a contract labour working under Opposite Party No.2, the contractor and Opposite Party No.1 was the principal employer. The applicant was working under Opposite Party Nos. 1 & 2 continuously without any break till his retrenchment in December

1996. Prior to his retrenchment the applicant had raised Industrial Dispute Case No. 16/1996 before the Tribunal wherein the Opposite Party Nos.1 & 2 were also the parties. Pending adjudication of that dispute since he was retrenched, he has preferred this application under Section 33-A of the Industrial Disputes Act. The uncontroverted fact is that the complainant was a contract labour working under Opposite Party No. 2, contractor who had been working in the establishment of Rourkela Steel Plant being the principal employer. It is specifically argued by the learned counsel for the complainant that the management witness No.1 in his affidavit evidence has admitted that the job in which the applicant was working long prior to his retrenchment on the 31st December 1996 was the job contract awarded to the O.P. No. 2 by O.P. No. 1 after finalization of commercial formalities i.e. Ext. A series, copy of tender notice, work order and other contract documents. It is also admitted by the management witness No.1 in his deposition before the Court that the applicant was working under the contractor in the establishment of CLC(Works), which comes under Personnel and Administration Department of the SAIL, Rourkela Steel Plant and G. M. (P. & A.),SAIL, Rourkela Steel Plant, being the head of the department, is the principal employer for all purpose in relation to the present dispute. On the other hand, the Opposite Party has not specifically denied that Opposite Party No.1 is not the principal employer. Moreover Ext. A, the general terms and condition for job contract issued by SAIL, R.S.P. while entering into the contract with the contractor, Opposite Party No. 2 in the definition of company it is specifically mentioned that company means Rourkela Steel Plant, Rourkela, the principal employer for the purpose of Contract Labour (Regulation & Abolition) Act. In Clause 3.5 it is mentioned that all payments to all the employees/workers are required to be made by the contractor in presence of authorized representative of the principal employer. Similarly in Clauses 7.1 & 7.3, the Rourkela Steel Plant is termed as principal employer. Thus as per the terms and condition of the contract being not specifically denied by Opposite Party No.1 in view of the evidence on record, the Opposite Party No.1 SAIL, G.M. (P. & A.) is the principal employer of the complainant. Accordingly, this Issue is decided positively in favour ofthe complainant.

8. *Issue No.* ii :—This is the vital issue for determination. The complainant workman was a contract labour under Opposite Party No.2 who had been working in the establishment of the Rourkela Steel Plant being the principal employer continuously for a period more than 10 years without any break in service till he was retrenched on the 31st December 1996. Admittedly prior to his retrenchment from his service, the applicant through his union had raised an industrial dispute for regularization of his service in R.S.P. While the dispute was pending before the Tribunal for adjudication, he has been retrenched from service. The complainant has specifically pleaded that the Opposite Party No. 2 in collusion with open instruction of Opposite Party No. 1 had retrenched the applicant from service illegally. It was an act of violation of condition of service by the Opposite Party for which he filed this application before the Tribunal for its adjudication and appropriate relief.

9. Undisputedly, the applicant was a concerned workman in I. D. Case No.16/1996 which was pending before this Tribunal at the relevant time and the schedule of reference was :

> "Whether 310 contract labourers (as per list) working in 23 categories of jobs (as per list) in M/s Rourkela Steel Plant are entitled for regularization in service under the principal employer i.e. M/s Rourkela Steel Plant, Rourkela ? If so, what would be the details ?"

This reference was made by the Government of Odisha, on the 4th December 1996 prior to the date of retrenchment of the complainant and G. M. (P. & A.), SAIL, R.S.P. and the contractor O.P. No. 2 were the necessary party in that dispute. The learned counsel for the complainant has submitted that if the employer discharges/dismisses a workman without making an application for permission of the authority for the proposed action of dismissal or discharge as required by 33(1)

of the Act then the aggrieved workman entitled to make a complaint under Section 33-A to the authority without waiting for the reference being made under Sections 10 and 12 of the Act.

10. The learned counsel for the complainant has pointed out during argument that admittedly the applicant was a contract labour who had been working in the management of SAIL, R.S.P., Rourkela through contractor appointed by the management of Rourkela Steel Plant. He had been working continually for the period more than 10 years without any break in service till he was retrenched on the 31st December 1996. During the period of his entire service he was never retrenched even for a single day, although contractors were changed, his name was not transferred from the roll of the outgoing contractors to the incoming contractors. The learned counsel for the complainant has further pointed out that in the year 1996, the applicant through his union had raised the dispute before the Dy. Labour Commissioner, Rourkela claiming regularization of his service under Rourkela Steel Plant, the principal employer. But the management did not pay any heed to the demand of the complainant, the conciliation proceeding failed and special report of A.L.C.-*cum*-Conciliation Officer, the 16th November 1996 vide "Ext. C was sent to the Government for making a reference and accordingly the Government made the reference on the 4th December 1996. The learned counsel for the complainant pointed out that while the reference was pending for adjudication before the Tribunal on the 21st December 1996 the D.L.C., Rourkela in his letter requested G. M. (P. & A.), Rourkela Steel Plant not to alter the service condition of the workman as stipulated under Section 33 of the I. D. Act vide Ext. 3. Again on the 23rd December 1996 the D.L.C. wrote a letter to the Opposite Party No. 1 to revoke all such notices issued to the contract labourers and ensure their engagement till legal formalities were complied with vide Ext. 4. The learned counsel for the complainant has vehemently argued that the retrenchment of the applicant since was made during pendency of the dispute i.e. I. D. Case No.16/1996 there is clear violation of provision of Section 33 of the Act by the employer/contractor.

11. Section 33 (1) of I. D. Act envisages :

> (1) During the pendency of any conciliation proceeding before a Conciliation Officer or a Board of any proceeding before(an arbitrator or) a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, on employer.

Thus whether the mandatory provision of Section 33 of the I. D. Act, 1947 is violated by Opposite Party No. 1 is a question for determination. Since the Section 33(1) refers action by the employer (2) any alternative if any of condition of service. The learned counsel for the Opposite Party No. 1 has vehemently argued with regard to the action of employer that the 1st party, SAIL, R.S.P. is not the employer in respect of the applicant. There exists no employer and employee relationship between the management of R.S.P. and the contract labour. It is pointed out by the learned counsel for the management, W.W. 1 in Paras. 9 & 10 of his affidavit evidence has deposed that he was working under the contractor, but the job performed by him was supervised by the supervisor, i.e. R.S.P. and the legal dues including wages, compensation, gratuity were paid by the principal employer.

12. In this context it would be beneficial to go through the contract entered into by Opposite Party No.1 with the Opposite Party No. 2. The tender notice Ext. A was issued by Opposite Party No. 1, the terms and condition with registered contractor for the work to be performed by the contractor for the contractual value after deposit of N. S. money for a specific period of contract from the 1st October 1995 to the 31st December 1996 subject to curtailment/extension of period which was subsequently extended up to the 31st December 1996 at the existing rate of terms and conditions. The contractor was to abide by the terms and conditions of the agreement. The contractor who was

engaged as per the terms and conditions had deployed his labour in terms of the contract including,applicant. It is pointed out by the learned counsel for the Opposite Party No. 1 with regard to the supervision it was the responsibility of the contractor to supervise the job under the contract, since R.S.P as the principal employer, it exercises only secondary control or supervision and as such it does not establish any employer and employee relationship between R.S.P and the contract labour.

13. Further it is submitted that the determining test for establishing the relationship between employer and the employee are who appoints the workers, who pays the salary/remuneration or who has authority to dismiss or who can take disciplinary action, the extent of complete control and supervision and that there is also settled principles of law as decided by the Hon'ble Supreme Court in several cases.

14. However in the instant case, as per the terms and conditions of the workers evidently the Opposite Party No. 1 , the principal employer had entered into a contract with Opposite Party No. 2 and the later had appointed the contract labour including the complainant for discharge of the contractual work, i.e Making proper guarding arrangement to guard the office buildings of Town Services Department, Social Welfare, Horticulture, Community Development, Hill View Girls Hostel with full responsibility for loss and damage to the building and property. As per the general terms and condition of the contract employees means a workman/labour employed by a contractor. All payments to the employees/ workers are made by the contractors in presence of the authorized representative of the principal employer who shall record on the acquaintance roll under his signature as a token of having witness the payment. The contractor was to maintain record and register in respect of the workers employed by him shall produce the same for verification on demand by various representative of the management of Rourkela Steel Plant. The payments of wages were made by the contractor in presence of the authorized representative of the principal employer. Similarly, all statutory dues payable to the workers are to be made payment in presence of the representative of the principal employer. R.S.P. was empowered to deduct any statutory demand towards E.P.F. and wages. The statutory deposit of E.S.I., E.P.F. of the workers are to be made in presence of the representative of the principal employer. Thus no doubt, the workmen were appointed by the contractor. However from the date of appointment, work done, payment of wages, statutory dues towards E.S.I, E.P.F of the workers are made in presence of the representative of the principal employer. Further it is evident from the letter the 21st November 1996 written by Dy. Manager, Administrative Town Services, SAIL to the contractor for which the contractor has been advised to take action by giving one month notice for closure of all contract labourers engaged by him for executing respective job contract on or before the 30th November 1996 positively. As per the guidelines and instruction of R.S.P. from the date of appointment of the workman till the retrenchment, the contractor was acting as per the instruction of the R.S.P., the Opposite Party No. 1. The aspect of supervision and control to the extent ensuring the work for which the operative agreements have been executed is being carried out properly would always exist with principal employer. The workman, the applicant has established that he was working under the direct control and supervision of the principal employer. Secondly as reported in 1994-5-Supreme Court Cases-304 (R.K.Panda and others *Vrs.* SAIL & others). In Para. 9 of the judgement they have given direction to the SAIL. After interim order passed by Hon'ble Supreme Court as follows :

(1) All labourers engaged through contractors and continuously working with the respondent for the last 10 years on different jobs shall be absorbed by the respondent as their regular employees subject to medically fit and below 58 years of age.

(2) While absorbing them as regular employees their *inter se* seniority shall be determined.

(3) They will not be entitled to the difference in their contractual and regular wages till absorption. They shall be paid wages & allowances at par with their counterparts and shall be paid at the minimum rate.

(4) They will be governed by the terms & conditions prescribed by respondent from time to time.

(5) The benefit of absorption shall not be extended to contract labourers who have taken voluntary retirement on payment of the retrenchment compensation.

(6) The respondent shall retrench workmen so absorbed, in accordance with law

(7) If there is any dispute in respect of the identification of contract labourers, such dispute shall be decided by Chief Labour Commissioner (Central)on material produced before him.

(8) This direction shall be operative only in respect of 142 jobs out of 246 jobs

(9) This order does not relate to the persons who have already been absorbed

(10) The persons, who had been retrenched, but in terms of directions of this Court have been taken back shall be entitled to the benefit of this order.

(11) For the purpose of calculating the payment of retrenchment benefit, hereafter the 10 years, period aforesaid shall be counted.

(12) This order shall be complied with by the respondent within four months from today.

Such direction of the Hon'ble Supreme Court giving rise to the employer and employee relationship between R.S.P., SAIL and the workman. Secondly in I. D. Case No.16/1996, the State Government has made a reference to the Industrial Tribunal with a schedule :

> "Whether 310 contract labourers (as per list) working in 23 categories of jobs(as per list) in M/s Rourkela Steel Plant, Rourkela are entitled for regularization in service under the principal employer, i.e. M/s Rourkela Steel Plant, Rourkela ? If so, what would be the details ?".

The State Government while making reference proceeds on the basis that the principal employer had appointed contractor and such appointments are valid. The State must have *prima facie* satisfied itself that there exists a dispute as to whether the workmen are in fact not employed by the contractor but by the management.

15. Undisputedly, the retrenchment compensation was made by Opposite Party No.1. As provided under Section 21(4) of the Contract Labour (R. & A.) Act the liability for payment of wages to the contract labour rest with the contractor failing which the principal employer would pay and recover the amount from the contractor which was a statutory payment permissible under law. This apart, the learned counsel for the Opposite Party No. 1 has submitted that in terms of several orders of Hon'ble Supreme Court in W.P.C. Case No. 617 of 86, Ext. C series and the modalities framed thereto vide Ext. D, the retrenchment compensation to be paid by an independent contractor to their labourers were recovered from them and paid by the Opposite Party No. 1 on cessation of the employment. Similarly the gratuity dues, the right of which were protected by virtue of the order of the Hon'ble Supreme Court is the consequence of continuous of employment for a period of 5 years for which the contractors were not liable to pay as not in contract. The payment was made by the Opposite Party No. 1 as a statutory requirement .The learned counsel for the Opposite Party No. 1 , thus stressed on the point that the plea taken by the petitioner that since the compensation

and gratuity dues were paid by the Opposite Party No. 1 to the complainant is a proof of the fact that there exists relationship between employer and employee is not correct since this does not *ipso facto* create relationship between employer and employee between Opposite Party No. 1 with the applicant, contract labour who was the employee of Opposite Party No. 2 only. However, keeping in view of my aforesaid observation, the argument put forth by learned counsel of Opposite Party No. 1, in view of the evidence both oral and documentary evidence on record as discussed, I am not convinced that Opposite Party No. 1, R.S.P., SAIL has no liability as that of the contractor being the employer in relation to the complainant-workman.

16. So far regarding 2nd part of the provision of Section 33(1) is concerned, i.e. in alteration if any of condition of service, it goes without saying as per the contract documents, the applicant workman was appointed by the contractors employed for a particular work for a specific period, i.e. up to the 31st December 1996 by the order of the SAIL, R.S.P. to the contractor in respect of the work entrusted to him. Thereafter there was no extension of period of contract .Thus as soon as the period was over the employment was automatically comes to an end after the 31st December 1996. The learned counsel for the applicant has humbly submitted that the retrenchment of the applicant was made during the pendency of the dispute, i.e. I. D. Case No.16 of 1996 . So there is clear contravention of provision of under Section 33 of the I. D. Act by the employer/contractors, i.e Opposite Party No. 1 and Opposite Party No.2.

17.The reference under Section 10 of the I. D. Case No.16/1996 was made on the 4th December 1996. The conciliation was ended on submission of failure report submitted on the 16th November 1996 and same was submitted to the Government of Odisha, Labour & Employment Department. On consideration of the report of the Conciliation Officer, the State Government being satisfied that there exists industrial dispute between the management with 23 contractors of R.S.P. management and 310 contract labourers. The reference was made to the Tribunal with the schedule for regularization. As per the mandatory provision of Section 33 of the I.D. Act, the applicant workman should not have been discharged or dismissed during the pendency of any proceedings before the Tribunal in respect of industrial dispute. In this respect the learned counsel for the complainant has relied on a decision, i.e. in Civil Appeal No. 900 of 1976 (The Bhavnagar Municipality and Alibhai, Karimbhai and others). Wherein their Lordship have decided “while disposing of C.A. No. 900 of 1976 in the matter of non-compliance of Section 33-A and statutory provision of the complaint under Section 33- A and its maintainability as follows :

> “The character of the temporary employment of the respondents being a direct issue before the Tribunal, that condition of employment, however insecure, must subsist during the pendency of the dispute before the Tribunal and cannot be altered to their prejudice by putting an end to that temporary condition. This could have been done only with the express permission of the Tribunal. It goes without saying that the respondents were directly concerned in the pending industrial dispute. No one can also deny that snapping of the temporary employment of the respondents is not to their prejudice”.
>
> All the five features adverted to above are present in the instant case. To permit rupture in employment, in this case, without the prior sanction of the Tribunal will be to set at naught the avowed object of Section 33 which is principally directed to preserve the *status quo* under specified circumstances in the interest of industrial peace during the adjudication. We are, therefore, clearly of opinion that the appellant has contravened the provisions of Section 33(1)(a) of the Act and the complaint under Section 33-A,at the instance of the respondents is maintainable. The submission of Mr. Parekh to the contrary cannot be accepted.

This being the position of law, nothing is put forth for the on contrary I am not convinced with the submission made by the learned counsel for the Opposite Party No. 1 that there is no violation of provision of mandatory provision of Section 33. Thus I concluded by deciding this issue that the R.S.P., Opposite Party No.1 and contractor, Ramkrishna Enterprises, Opposite Party No. 2 during pendency of the dispute I. D. Case No. 16/96 being the principal employer and the employer of the applicant had altered the condition of service of the workman by retrenching him from service, thereby violated the provision of Section 33 of the I. D. Act. Accordingly the issue No. (ii) is answered.

18. *Issue Nos. iii & iv* :—Both the issues being interlinked to each other are taken up together for determination. The learned counsel for the complainant contract labour during his argument has pointed out that undisputedly the applicant was a contract labour who had been working for the management of SAIL, R.S.P. He had been working continuously for a period of more than 10 years without any break in service till he was retrenched on the 31st December 1996. During the period of his entire service, he was never retrenched even for a single day although the contractors were changed his name was not transferred from the roll of the outgoing contractors to the incoming contractors.

19. Evidently in the year 1996 the applicant through his union had raised a dispute before the Dy. Labour Commissioner, Rourkela for regularization of his service under R.S.P., the principal employer. But the management did not accept the demand of the applicant. Thereafter in the conciliation proceeding the failure report of A.L.C.-*cum*-Conciliation Officer, Ext. E, dated the 16th November 1996 was sent to the Government for making reference and evidently the reference was made to the Tribunal by the Government on the 4th December 1996 with afore-mentioned schedule. It is also on record while the reference was pending for adjudication before the Tribunal on the 21st December 1996 the D.L.C., Rourkela in his letter had requested G.M., (P. & A.),R.S.P., Rourkela Steel Plant not to alter the service condition of the workman as stipulated under Section 33 of the I. D. Act vide Ext. 3. Again on the 23rd December 1996 D. L. C. wrote a letter to O.P. No.1 to revoke all such notices issued to the contract labourer and ensure their engagement till legal formalities are complied with vide Ext. 4. It is pointed out by the learned counsel for the complainant that while executing the contract order certain terms and condition as provided in general terms and condition for the job contract, Ext. A . In Clause 17 it is mentioned :

> The Hon'ble Supreme Court of India had passed an order on the 8th September 1988 in Civil Miscellaneous Petition No. 21210 of 88 arising out of Writ Petition No. 617 of 86 that "There shall be no retrenchment of workmen involved in this case until further orders". It will be the duty of the incoming contractor to comply with the said order in both letter and spirit during the operation of the contract. The contractor shall also employ the workmen of the respective outgoing contractor right from the date of commencement of the contract in order to comply with the said order. However, this particular clause of the contract may stand repealed/modified, as the case may be pursuant to any order of the Hon'ble Supreme Court of India in any other Civil Miscellaneous Petition connected with the case or if final disposal of the writ petition. The incoming contractor shall employ all the contract labour of the outgoing contractor and shall ensure that the contract labour shall have been benefit of continuity of service and all benefits already accrued to them and shall also carry out all instructions as may be necessary for compliance with any order of the Court.

This apart the order passed by Hon'ble Supreme Court on the 8th September 1988, the 30th January 1991 and the 4th March 1991 nowhere specifically had given any direction to affect any retrenchment of contract labour. As per the contract guidelines no contract labour shall be retrenched as per the order of the Hon'ble Supreme Court. The learned counsel for the complainant vehemently argued that the complainant should not have been retrenched on the 31st December

1996 during the pendency of the dispute, i.e. I.D. case No.16/96 and should have made arrangements to retain the complainant in job by way of substituting the contractors. In reply the learned counsel for the 1st party has submitted that the complainant workman was appointed only for a specific period for particular work and as soon as the period was over the work was over, their employment automatic came to an end. On the expiry of such period, thus there was no termination. There was no question of reinstatement. Accordingly the notice under Section 25-F of the I. D. Act and wages in lieu of notice and compensation as stipulated under Section 25-F have been complied with .Hence it was a valid retrenchment. Where as the learned counsel for the complainant has vehemently argued that the retrenchment of the applicant workman on the 31st December 1996 during the pendency of the dispute, i.e. I. D. Case No.16/96 which was referred by the Government on the 4th December 1996. Before effecting retrenchment neither the contractor nor the principal employer had made any application seeking permission from the authority for proposed action of retrenchment as required by Section 33(1) of the I. D. Act. It is pointed out by the learned representative' of the complainant that in the instant case as the action of the employer and the principal employer is against the statutory provision under law, the said action itself becomes illegal. Hence, Opposite Party No. 1 and Opposite Party No. 2 are jointly and severally liable.It can not take the plea that the mandatory provision under Section 25-F of the I. D. Act have been complied with and for that complainant's retrenchment should be treated as legal. When the retrenchment of the applicant becomes illegal then the dispute is maintainable against the contractor and the principal employer.

20. With due respect of the submission made by the learned representative of the Ist party complainant and Opposite Party No. 1 while deciding issue No. (ii), this Tribunal has determined that the retrenchment was made during the pendency of the dispute i.e. I. D. Case No.16/96 by the Ist party R.S.P. along with the contractor without complying the mandatory provision. There is clear violation of provision of Section 33 of the I. D. Act by the principal employer and the contractor and the retrenchment is illegal. Hence, this dispute is maintainable against the management of R.S.P., SAIL. Accordingly both issues are answered positively against Opposite Party No. 1.

21. *Issue No. (v)* :—While filing the complainant the complainant application has sought for the reliefs like :—

1. The complainant may be reinstated in his service with continuity of service from the date of his termination, i.e., the 31st December 1996.
2. The complainant is entitled to full back wages and all other consequential benefits from the date of his termination.
3. The complainant may be granted compensation of Rs. 25,000 for the harassment and miseries suffered.

To meet this claim, the learned representative of the complainant has put forth his argument in the light that under Section 21 of the Contract Labour (Regulation and Abolition) Act, I970. Primarily the contractor is responsible for payment of wages to each of the workman employed by him and the principal employer is required to engage his representatives to be present at the time of disbursement of wages by the Contractor in terms of Section 21 (2) of the CLRA Act. sub-section (4) to Section 21 of CLRA Act further says that in case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or unpaid balance due, as the case may be to the

contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor. Section 21(4) of CLRA Act statutorily creates liability on the principal employer to ensure payment of wages to the contract labour and no distinction can be made between the contract labour or the workman directly employed by the principal employer in matter of recovery of wages. The CLRA Act in Section 2(h) 'wage' shall have the meaning assigned to it in Clause (vi) of Section 2 of the Payment of Wages Act, 1936 (4 of 1936). By relying on the decision reported in 2007 (114) FLR (Para. 9, 10, 11, 12, 13 & 14) Bharat Earth Movers Ltd, Mysore *Vrs.* Gangaramaiah and others. The learned representative of the complainant has submitted that from bare reading of Section 2(vi) of the Payment of Wages Act, 1936 which clearly says that if this Hon'ble Tribunal holds that the retrenchment of the application was in contravention of the provisions of Section 33(1) of the I. D. Act and pass an award for payment of back wages to the complainant for the period from the date of retrenchment to the date of passing of the award, the contractor is under obligation to pay the same to the workman and in the event of non- payment of back wages by the contractor it can be recovered from the principal employer under Section 21(4) of the CLRA Act, 1970.

21. I have gone through the provision envisaged in Section 21 of Contract Labour (R. & A.) Act, 1970, and Section 2 of Payment of Wages Act and also gone through the decision relied on by the learned representative of the complainant which relates to the maintainability of the application under Section 33-C(2) of the I. D. Act. The facts, circumstances and provision of law is entirely different from the present dispute, hence not applicable to this dispute. When it is the case of the applicant that this applicant along with others who were party in I. D. Case No .16/96 have approached the Hon'ble Court for their absorption by the SAIL, Rourkela Steel Plant, Rourkela which is subjudice before the Hon'ble Court. In the circumstances, I decline to pass any order regarding reinstatement, back wages and compensation as sought for.

HENCE ORDERED

The complaint under Section 33-A of the Industrial Disputes Act, 1947 is maintainable against the Rourkela Steel Plant and contractor. However in the circumstances, no orders passed on the relief as sought for.

Dictated and corrected by me.

V. JAYASHREE
15-12-2014
Presiding Officer
Industrial Tribunal, Rourkela

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15-12-2014
Presiding Officer
Industrial Tribunal, Rourkela

By order of the Governor
M. NAYAK
Under-Secretary to Government

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